



COUNCIL AGENDA: 01/15/08  
ITEM: 3.4

## Memorandum

**TO:** CITY COUNCIL

**FROM:** Mayor Chuck Reed

**SUBJECT: LABOR NEGOTIATION  
GUIDELINES**

**DATE:** January 15, 2008

Approved

*Chuck Reed*

Date

*1/15/08*

### **RECOMMENDATION**

Approve the draft Council Policy on labor negotiations with the attached amendments.

### **BACKGROUND**

With the approval of the 2007 Mayor's Biennial Ethics Review, the Council directed city staff to return with a draft policy on labor negotiations that is intended to set guidelines for the Mayor, members of the City Council, and Council staff to ensure negotiations are conducted in good faith and to avoid actions that may constitute an unfair labor practice. Bypassing designated negotiators could constitute an unfair labor practice. The attached policy helps ensure that the city fulfills its obligation to meet and confer in good faith in compliance with the Charter, the Meyers-Milias-Brown Act (MMBA), the Brown Act, and the City's Employer-Employee Relations Resolution.

Because salary and benefits are the largest expenditure of public funds, the process needs to be as clear as possible in order to preserve the integrity of the labor contract negotiation process. Under the MMBA, the City is obligated to meet and confer in good faith. Individual meeting and conferring with Councilmembers can compromise the negotiation process and the Brown Act's requirement of the confidentiality of closed session. Meeting and conferring in good faith also includes not bypassing the designated negotiators. Bypassing can occur when proposals, counter-proposals, or concessions are presented and/or discussed with members of the Council that have not been presented through the designated negotiators, just as the City cannot bypass the union's designated representatives.

Negotiations should be based on the direction approved by the majority of the City Council through official Council direction. This policy does not restrict bargaining unit representatives from advocating their position. Options include making comments during open forum of City Council meetings or putting comments in writing. This also does not restrict meetings or discussions with City Councilmembers or Council staff on topics not related to negotiations.

The attached amendments make clear that individual members of the Council or Council staff should not meet and confer and shall not bypass the designated negotiators.

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***City of San José, California***

**COUNCIL POLICY**

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<b>EFFECTIVE DATE</b>	<b>REVISED DATE</b>	
<b>APPROVED BY COUNCIL ACTION</b>		

**BACKGROUND**

Collective bargaining is governed by the Meyers-Milias-Brown Act (MMBA), the City of San Jose Employer- Employee Relations Resolution (#39367) and the City Charter. The City Charter designates the City Manager as the chief administrative officer of the City. Accordingly, Resolution #39367 delegates the authority to negotiate on behalf of the City to the City Manager or the City Manager's designee. Both the City and the bargaining units have an obligation under applicable laws to negotiate in good faith.

**PURPOSE**

This policy applies only to the Mayor, City Council members and Mayor and Council staff.

The purpose of this policy is to set guidelines for the Mayor, members of the City Council members and Mayor and Council staff to ensure negotiations are conducted in good faith and to avoid actions that may constitute an unfair labor practice.

**POLICY**

It is the Policy of the City Council that all of its members and staff shall abide by the following guidelines when the City Manager or the City Manager's designee is in negotiations with any bargaining unit:

1. Pursuant to San Jose Resolution #39367, negotiations are conducted by the City Manager through his/her designee. Accordingly, negotiations regarding potential proposals and possible settlement shall occur between the City's designated negotiator(s) and the union's designated negotiator(s).
2. Pursuant to Section 411 of the City Charter, while the Council may express its views to the City Manager, the Council shall not interfere with the execution by the City Manager of his or her authority and duty to negotiate on behalf of the City.
3. ~~During negotiations and until the meet and confer process has been completed,~~  
~~m~~Members of the City Council or Council staff shall not meet and confer or discuss with the bargaining unit representatives or persons acting on their behalf. "Meet and confer", as defined in the Meyers-Milias-Brown Act in California Government Code Section 3505, includes means that a public agency, or such representatives as it may designate, and representatives of recognized employee organizations, shall have mutual obligations personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and

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## ***City of San José, California***

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proposals, and to endeavor to reach agreement on matters within the scope of representation. ~~specific negotiation proposals, possible settlements, negotiation strategy or Council direction.~~ This does not restrict bargaining unit representatives from making comments during open forum of City Council meetings or from putting comments in writing. This also does not restrict meetings or discussions with City Council members or Council staff on topics not related to negotiations.

4. In order to avoid bypassing the designated negotiators, Council members or Council staff shall not participate in any presentation, communication or discussion with bargaining unit representatives or persons acting on their behalf regarding any proposal, counter proposal, and/or concession, verbally or in writing, that has not previously been presented through the designated negotiators.

4.5. If any contact is made by a bargaining unit representative or persons acting on their behalf regarding ongoing negotiations to Council members or Council staff, Council members should refer the bargaining unit representative or persons acting on their behalf to the City Manager and shall report it to the City Manager and to the City Council.

5.6. Authorization and direction to the City's negotiating team is provided in closed session. In order to maintain the integrity of the negotiation process, such authorization must remain confidential.

6.7. The Brown Act provides that a person may not disclose confidential information that has been acquired by being present in a closed session unless the Council authorizes disclosure of that confidential information.